

106TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. BURNS introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Satellite Services Com-
5 petition and Privatization Act of 1999”.

6 SEC. 2. PURPOSE.

7 It is the purpose of this Act to promote a fully com-
8 petitive domestic and international market for satellite
9 communications services for the benefit of consumers and
10 providers of satellite services by fully promoting the pri-

1 vatization of the intergovernmental satellite organization,
2 INTELSAT, and reforming the regulatory framework of
3 COMSAT Corporation.

4 SEC. 3. FINDINGS.

5 Congress makes the following findings:

6 (1) International satellite communications serv-
7 ices constitute a critical component of global voice,
8 video and data services, play a vital role in the inte-
9 gration of all nations into the global economy and
10 contribute toward the ability of developing countries
11 to achieve sustainable development.

12 (2) The United States played a pivotal role in
13 stimulating the development of international satellite
14 communications services by enactment of the Com-
15 munications Satellite Act of 1962 (47 U.S.C. 701 et
16 seq.), and by its critical contributions, through its
17 signatory, COMSAT Corporation, in the establish-
18 ment of INTELSAT, which has successfully estab-
19 lished global satellite networks to provide member
20 countries with worldwide access to telecommuni-
21 cations services, including critical lifeline services to
22 the developing world.

23 (3) By statute, COMSAT, a publicly traded cor-
24 poration, is the sole United States signatory to
25 INTELSAT and, as such, is responsible for carrying

1 out United States commitments under the
2 INTELSAT Agreement and the INTELSAT Oper-
3 ating Agreement. Pursuant to a binding Head-
4 quarters Agreement, the United States, as a Party
5 to INTELSAT, has satisfied many of its obligations
6 under the INTELSAT Agreement.

7 (4) In the 37 years since the enactment of the
8 Communications Satellite Act of 1962, satellite tech-
9 nology has advanced dramatically, large-scale financ-
10 ing options have improved immensely and inter-
11 national telecommunications policies have shifted
12 from those of natural monopolies to those based on
13 market forces, resulting in multiple private commer-
14 cial companies around the world providing, or pre-
15 paring to provide, the domestic, regional, and global
16 satellite telecommunications services that only
17 INTELSAT had previously had the capabilities to
18 offer.

19 (5) Private commercial satellite communications
20 systems now offer the latest telecommunications
21 services to more and more countries of the world
22 with declining costs, making satellite communica-
23 tions an attractive complement as well as alternative
24 to terrestrial communications systems, particularly
25 in lesser developed countries.

1 (6) To enable consumers to realize optimum
2 benefits from international satellite communications
3 services, and to enable these systems to be competi-
4 tive with other international telecommunication sys-
5 tems, such as fiber optic cable, the global trade and
6 regulatory environment must support vigorous and
7 robust competition.

8 (7) In particular, all satellite systems should
9 have unimpeded access to the markets that they are
10 capable of serving, and the ability to compete in a
11 fair and meaningful way within those markets.

12 (8) Transforming INTELSAT from an inter-
13 governmental organization into a conventional sat-
14 ellite services company is a key element in bringing
15 about the emergence of a fully competitive global en-
16 vironment for satellite services.

17 (9) Consistent with United States obligations
18 under the World Trade Organization Basic Agree-
19 ment on Telecommunications Services and to pre-
20 vent the potential distortion of competition in the
21 United States market, a pro-competitive privatiza-
22 tion of INTELSAT is an appropriate prerequisite to
23 granting INTELSAT direct access to users in the
24 United States market.

1 (10) It is in the interest of the United States
2 to remove, by January 1, 2002, the reservation in
3 the Fourth Protocol to the General Agreement on
4 Trade in Services regarding INTELSAT's access to
5 the United States market through COMSAT, but
6 such reservation cannot be removed without ade-
7 quate assurance that the United States market for
8 satellite services will not be disrupted by such
9 INTELSAT access.

10 (11) The Communications Satellite Act of
11 1962, and other applicable United States laws, need
12 to be updated to encourage the pro-competitive pri-
13 vatization of INTELSAT to update the domestic
14 United States regulatory regime governing COM-
15 SAT, and to ensure a competitively neutral United
16 States framework for the provision of domestic and
17 international telecommunications services via sat-
18 ellite systems.

19 SEC. 4. REVISION OF COMMUNICATIONS SATELLITE ACT OF
20 **1962.**

21 The Communications Satellite Act of 1962 (47
22 U.S.C. 701) is amended by adding at the end the following
23 new title:

1 “TITLE VI-SATELLITE SERVICES
2 COMPETITION AND PRIVATIZATION
3 “ Subtitle A-Transition to a Privatized
4 INTELSAT

5 “SEC. 601. POLICY OF THE UNITED STATES.

6 “It shall be the policy of the United States-

7 “(1) to encourage INTELSAT to privatize in a
8 pro-competitive manner as soon as possible, but not
9 later than January 1, 2002, recognizing the need for
10 a reasonable transition and process to achieve a full,
11 pro-competitive restructuring; and

12 “(2) to work constructively with its inter-
13 national partners in INTELSAT, and with
14 INTELSAT itself, to bring about a prompt restruc-
15 turing that will ensure fair competition, both in the
16 United States as well as in the global markets
17 served by the INTELSAT system.

18 “SEC. 602. ROLE OF COMSAT.

19 “(a) ADVOCACY.—As the sole United States signa-
20 tory to INTELSAT, COMSAT shall act as an advocate
21 of a pro-competitive privatization of INTELSAT, and
22 shall exercise its voting rights with INTELSAT consistent
23 with that mission and the United States instructional
24 process.

1 “(b) ANNUAL REPORTS.-COMSAT shall report an-
2 nually to the Committee on Commerce of the House of
3 Representatives and the Committee on Commerce,
4 Science, and Transportation of the Senate on the progress
5 being made by INTELSAT to privatize in a pro-competi-
6 tive manner.

7 “SEC. 603. RESTRICTIONS PENDING PRIVATIZATION.

8 “(a) INTELSAT ACCESS TO UNITED STATES MAR-
9 KET.—INTELSAT shall be prohibited from entering the
10 United States market directly to provide any satellite com-
11 munications services or space segment capacity to carriers
12 (other than COMSAT) or end users in the United States
13 prior to achieving a pro-competitive privatization certified
14 by the President pursuant to section 612.

15 “(b) SERVICE RESTRICTIONS.-Until the President
16 makes a certification pursuant to section 612, direct-to-
17 home satellite services, direct broadcast satellite services,
18 and satellite digital audio radio services, as well as satellite
19 communications services in the Ka Band provided via the
20 INTELSAT system shall not be authorized in the United
21 States by the Commission. However, that limitation may
22 be waived upon a finding by the President that the provi-
23 sion of such service would enhance national security or
24 serve a vital public interest. This provision is not intended
25 to disrupt or otherwise jeopardize the continuing provision

1 of existing authorized services in the United States via the
2 INTELSAT system.

3 “(c) NEW SATELLITE PROCUREMENT PROHIB-
4 ITED.—The United States shall not authorize COMSAT
5 to participate in the procurement by INTELSAT of any
6 new satellites other than those enumerated in the
7 INTELSAT procurement plan in effect as of January 1,
8 1999. However nothing in this Act is intended to prevent
9 COMSAT’s participation in INTELSAT’s procurement
10 and use of replacement satellites where failure to do so
11 would jeopardize or disrupt the provision of existing au-
12 thorized satellite services via the INTELSAT system.

13 **“Subtitle B-Privatization of INTELSAT**

14 “SEC. 611. PRIVATIZATION.

15 “The President shall secure a pro-competitive privat-
16 ization of INTELSAT as soon as practicable, but no later
17 than January 1, 2002. Such privatization shall be con-
18 firmed by a final decision of the INTELSAT Assembly
19 of Parties.

20 “SEC. 612. CERTIFICATION.

21 “(a) APPLICATION.—Upon a final decision of the
22 INTELSAT Assembly of Parties creating the legal struc-
23 ture and characteristics of the privatized INTELSAT,
24 INTELSAT may file a request with the President for cer-
25 tification that the privatized INTELSAT’s entry into the

1 United States market for satellite services will not distort
2 competition in that market.

3 “(b) CERTIFICATION.—Upon application by
4 INTELSAT, the President shall make such determination
5 in accordance with the discretionary, pro-competitive cri-
6 teria in subsection (c), and shall take into consideration
7 all relevant competitive factors, including factors related
8 to other competitors in the United States and global mar-
9 ket for satellite services.

10 “(c) CRITERIA.—In making a determination pursu-
11 ant to subsection (b), the President shall consider whether
12 a privatized INTELSAT—

13 “(1) has no privileges or immunities limiting
14 legal accountability, commercial transparency, or
15 taxation;

16 “(2) has submitted to the jurisdiction of com-
17 petition and independent regulatory authorities of a
18 nation that is a signatory to the World Trade Orga-
19 nization Agreement on Basic Telecommunications
20 and that has implemented or accepted the
21 agreement * s reference paper on regulatory prin-
22 ciples;

23 “(3) can offer assurance of an arms-length rela-
24 tionship in all respects between itself and New Skies,

1 but in particular with respect to technical, financial,
2 and management contracts;

3 “(4) can demonstrate that the valuation of as-
4 sets to be transferred post-privatization is in accord-
5 ance with accepted commercial practice;

6 “(5) has access to orbital locations and associ-
7 ated spectrum post-privatization in accordance with
8 the same regulatory processes applicable to other
9 commercial satellite systems;

10 “ (6) conducts technical coordinations post-pri-
11 vatization under normal, established International
12 Telecommunications Unions procedures;

13 “(7) has an ownership structure in the form of
14 a stock corporation or other similar and accepted
15 commercial mechanism, and a commitment to a
16 timely initial public offering has been established for
17 the sale or purchase of company shares;

18 “(8) commits not to enter or seek to enter into
19 agreements or arrangements to secure exclusive ac-
20 cess to any national telecommunications market; and

21 “(9) will have accomplished a privatization con-
22 sistent with the criteria listed in this subsection at
23 the earliest possible date, but not later than January
24 1, 2002.

1 “SEC. 613. FCC REVIEW OF LICENSE APPLICATIONS.

2 “(a) APPLICATION.—If the President makes such a
3 certification pursuant to section 612, applications for a
4 satellite earth station or space station under title III of
5 the Communications Act of 1934 (47 U.S.C. 301 et. seq.),
6 letters of intent to provide service in the United States
7 via non-United States-licensed space segment, or applica-
8 tions under section 214 of that Act (47 U.S.C. 214), per-
9 taining to satellite communications services, to be provided
10 by or via the privatized INTELSAT, internationally or
11 within the domestic United States, as otherwise permitted
12 by law, may be filed with the Commission.

13 “(b) PUBLIC INTEREST DETERMINATION.—Except
14 as provided in (c), nothing in this Act shall restrict or
15 expand the Commission’s ability to make a public interest
16 determination concerning any application pertaining to a
17 privatized INTELSAT’s entry into the United States mar-
18 ket.

19 “(c) EFFECT OF PRESIDENTIAL CERTIFICATION ON
20 COMMISSION DELIBERATIONS.—The Commission shall be
21 bound by the President’s privatization certification made
22 pursuant to section 612 for purposes of any license appli-
23 cation, including space segment and earth station applica-
24 tions, pending before the Commission which pertains to
25 a privatized INTELSAT’s entry into the United States
26 market.

1 “SEC. 614. FAILURE TO PRIVATIZE IN A TIMELY MANNER.

2 “(a) REPORT.-In the event that INTELSAT fails
3 to fully privatize, as provided in sections 611 and 612,
4 by January 1, 2002, the President shall-

5 “ (1) immediately commence deliberations to de-
6 termine what additional measures should be imple-
7 mented to ensure the rapid privatization of
8 INTELSAT; and

9 “ (2) by not later than March 31, 2002, issue a
10 report delineating such measures to the Committee
11 on Commerce of the House of Representatives, and
12 the Committee on Commerce, Science, and Trans-
13 portation of the Senate.

14 “(b) UNITED STATES WITHDRAWAL.—Among the
15 measures that the President shall consider is whether the
16 United States should withdraw as a Party from
17 INTELSAT.

18 “(c) RESERVATION CLAUSE.-The President may de-
19 termine that, in consideration of progress made, it is in
20 the national interest of the United States to provide a rea-
21 sonable extension of time for completion of privatization.

22 “Subtitle C—COMSAT Governance and
23 Operation

24 “SEC. 621. ELIMINATION OF PRIVILEGES AND IMMUNITIES.

25 “(a) IN GENERAL.—COMSAT shall not have any
26 privilege or immunity on the basis of its status as a signa-

1 tory or a representative of the Party to INTELSAT, ex-
2 cept that COMSAT retains its privileges and immuni-
3 ties—

4 “(1) for those actions taken in its role as the
5 United States signatory to INTELSAT upon in-
6 struction of the United States Government;

7 “(2) for actions taken when acting as the Unit-
8 ed States signatory in fulfilling obligations under the
9 INTELSAT Operating Agreement;

10 “ (3) for INTELSAT signatory activities which
11 COMSAT does not support; and

12 “(4) in accordance with any other exceptions as
13 the President shall make in accordance with sub-
14 section (b) .

15 “ (b) EXCEPTIONS.-The President, or his designee,
16 shall ensure that any action authorized by the exception
17 is consistent with the purposes of this Act and COMSAT’s
18 responsibilities as the United States signatory.

19 “(c) No JOINT OR SEVERAL LIABILITY.—If COM-
20 SAT is found liable for any action taken in its status as
21 a signatory or a representative of the Party to
22 INTELSAT, such liability shall be in proportion to its
23 ownership interest in INTELSAT.

24 “(d) PROSPECTIVE EFFECT OF ELIMINATION.—The
25 elimination of privileges and immunities by reason of this

1 section shall apply only to actions or decisions taken by
2 COMSAT after the date of the enactment of this section.

3 “SEC. 622. ABROGATION OF CONTRACTS PROHIBITED.

4 “Nothing in this Act or the Communications Act of
5 1934 (47 U.S.C. 151 et. seq.) shall be construed to modify
6 or invalidate any contract or agreement involving COM-
7 SAT, INTELSAT, or any terms or conditions of such
8 agreement already in force on the effective date of this
9 Act, or to give the Commission authority, by rule-making
10 or any other means, to invalidate any such contract or
11 agreement, or any terms and conditions of such contract
12 or agreement.

13 “SEC. 623. PERMITTED COMSAT INVESTMENT.

14 “Nothing in this section shall be construed as pre-
15 cluding COMSAT from investing in or owning satellites
16 or other facilities independent from INTELSAT, or from
17 providing services through reselling capacity over the fa-
18 cilities of satellite systems independent from INTELSAT.
19 This section shall not be construed as restricting the types
20 of contracts which can be executed or services which may
21 be provided by COMSAT over the independent satellites
22 or facilities described in this section.

1 “ Subtitle D-General Provisions

2 “SEC. 631. REGULATORY PARITY.

3 “All satellite system operators and satellite service
4 providers providing similar services shall be subject to
5 comparable domestic United States regulatory treatment,
6 such as those pertaining to common carrier or non-com-
7 mon carrier status, imposition of regulatory fees, and
8 other such matters.

9 “SEC. 632. PROMOTION OF EFFICIENT USE OF ORBITAL
10 SLOTS AND SPECTRUM.

11 “All satellite system operators authorized to access
12 the United States market are encouraged to make efficient
13 and timely use of orbital and spectrum resources in order
14 to ensure that these resources are not warehoused to the
15 detriment of other new or existing satellite system opera-
16 tors. Where these assurances cannot be provided, satellite
17 system operators are encouraged to relinquish their rights
18 to these resources.

19 “SEC. 633. PROHIBITION ON PROCUREMENT **PREF-**
20 **ERENCES.**

21 “Nothing in this title or the Communications Act of
22 1934 (47 U.S.C. 151 et. seq.) shall be construed to au-
23 thorize or require any preference in Federal Government
24 procurement of telecommunications services, for the sat-
25 ellite space segment provided by INTELSAT, nor shall

1 anything in this title or that Act be construed to result
2 in a bias against the use of TNETSAT through existing
3 or future contract awards.

4 “SEC. 634. SATELLITE AUCTIONS.

5 “Notwithstanding any other provision of law, the
6 Commission shall not assign by competitive bidding orbital
7 locations or spectrum used for the provision of inter-
8 national or global satellite communications services. The
9 President shall oppose in the International Telecommuni-
10 cations Union and in other bilateral and multilateral fora
11 any assignment by competitive bidding of orbital locations
12 or spectrum used for the provision of such services.

13 “SEC. 635. RELATIONSHIPS TO OTHER LAWS.

14 “Whenever the application of the provision of this Act
15 shall be inconsistent with the provisions of the Commu-
16 nications Act of 1934 (47 U.S.C. 151 et seq.), the provi-
17 sions of this Act shall govern. However, the regulatory re-
18 form provisions of section 10 of the Communications Act
19 of 1934 (47 U.S.C. 160) shall continue to apply to any
20 provision of this Act and to any regulation applied to
21 COMSAT pursuant to this Act.

22 “ Subtitle E-Definitions

23 “SEC. 641. DEFINITIONS.

24 “(a) IN GENERAL.-In this title:

1 “(1) INTELSAT.-The term ‘INTELSAT’
2 means the International Telecommunications Sat-
3 ellite Organization established pursuant to the
4 Agreement Relating to the International Tele-
5 communications Satellite Organization
6 (INTELSAT).

7 “(2) COMSAT.-The term ‘COMSAT’ means
8 the corporation established pursuant to title III.

9 “(3) **SIGNATORY** .-The term ‘signatory’ means
10 a Party, or the telecommunications entity designed
11 by a Party, that has signed the Operating Agree-
12 ment and for which such Agreement has entered
13 into force or to which such Agreement has been pro-
14 visionally applied.

15 “(4) **PARTY**.—The term ‘Party’ means, in the
16 case of INTELSAT, a nation for which the
17 INTELSAT agreement has entered into force or
18 been provisionally applied.

19 “(5) **INTERNATIONAL TELECOMMUNICATION**
20 **UNION**.-The term ‘International Telecommuni-
21 cation Union’ means the intergovernmental organi-
22 zation that is a specialized agency of the United Na-
23 tions in which member countries cooperate for the
24 development of telecommunications, including adop-
25 tion of international regulations governing terrestrial

1 and space uses of the frequency spectrum as well as
2 use of the geostationary orbital arc.

3 “ (6) PRIVATIZED INTELSAT.-The term
4 ‘privatized INTELSAT’ means any entity created
5 from the privatization of INTELSAT from the as-
6 sets of INTELSAT.

7 “(7) ORBITAL LOCATION.-The term ‘orbital lo-
8 cation’ means the location for placement of a sat-
9 ellite in geostationary orbits as defined in the Inter-
10 national Telecommunication Union Radio Regula-
11 tions

12 “(8) SPACE SEGMENT.-The term ‘space seg-
13 ment’ means the satellites, and the tracking, telem-
14 etry, command, control, monitoring and related fa-
15 cilities and equipment used to support the operation
16 of satellites owned or leased by INTELSAT.

17 “(9) INTELSAT AGREEMENT.-The term
18 ‘INTELSAT agreement’ means the agreement relat-
19 ing to the International Telecommunications Sat-
20 ellite Organization (‘INTELSAT’), including all of
21 its annexes (TIAS 7532, 23 UST 3813).

22 “(10) OPERATING AGREEMENT.-The term ‘op-
23 erating agreement’ means, in the case of
24 INTELSAT, the agreement, including its annex but
25 excluding all titles of articles, opened for signature

1 at Washington on August 20, 1971, by Governments
2 or telecommunications entities designated by Gov-
3 ernments in accordance with the provisions of the
4 INTELSAT Agreement.

5 “ (11) REPLACEMENT SATELLITE.--The term
6 ‘replacement satellite’ means a satellite that takes
7 the place of a satellite that (A) is either in operation
8 as of the date of enactment, or is scheduled to be
9 launched pursuant to the INTELSAT procurement
10 plan of January 1, 1999, and (B) is unable to com-
11 mence or perform operations for which it is in-
12 tended, either because of failure in launch or deploy-
13 ment of the satellite in its appropriate orbit, or be-
14 cause of any other operational failure of the satellite.

15 “(12) HEADQUARTERS AGREEMENT---The term
16 ‘headquarters agreement’ means the binding inter-
17 national agreement, dated November 24, 1976, be-
18 tween the United States and INTELSAT covering
19 privileges, exemptions, and immunities with respect
20 to the location of INTELSAT’s headquarters in
21 Washington, D. C.

22 “(13) DIRECT-TO-HOME SATELLITE SERV-
23 ICES.—The term ‘direct-to-home satellite services’
24 means the distribution or broadcasting of program-
25 ming or services by satellite directly to the subscrib-

1 premises without the use of ground receiving or
2 distribution equipment, except at the subscriber's
3 uplink process to the satellite.

4 “(SERVICE.
5 ICE.—The term ‘satellite digital audio radio service’
6 means a radiocommunication service in which audio
programming is digitally transmitted by one or more
8 space stations directly to fixed, mobile, or portable
9 earth stations, and which may involve complemen-
tary repeating terrestrial transmitters, telemetry,
tracking and control facilities.

“(15) DIRECT BROADCAST SATELLITE SERV-
ICE.—The term ‘direct broadcast satellite service’
means a radiocommunication service in which sig-
nals transmitted or retransmitted by space stations
are intended for direct, reception by the general pub-
lic. In the direct broadcast satellite service the term
‘direct reception’ shall encompass both individual re-
ception and community reception.

“(16) EXISTING AUTHORIZED SERVICES.—The
term ‘existing authorized services’ means all services
authorized to be provided by COMSAT via the
INTELSAT system as of January 1, 1999.

“(b) COMMON TERMINOLOGY.—Except as otherwise
25 provided in subsection (a), terms used in this title that,

1 are defined in section 3 of the Communications Act of
2 1934 (47 U.S.C. 153) have the meanings provided such
3 terms in that section.“.

4 SEC. 5. REPEAL OF OWNERSHIP AND STRUCTURAL **PROVI-**
5 SIONS RELATING TO COMSAT.

6 Effective as of the date of the enactment of this Act,
7 the following provisions of the Communications Satellite
8 Act of 1962 (47 U.S.C. 701 et seq.) shall cease to be effec-
9 tive:

10 (1) Section 102(c).

11 (2) Subsections (a) and (b) of section 201.

12 (3) Paragraphs (1) through (10) of section
13 201(c).

14 (4) Sections 302, 303, and 304.

15 (5) Section 305(c).

16 (6) Section 402.

17 (7) Section 403(a).

18 (8) Section 404.